

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

Summary

Asbestos Sub Workgroup

July 7, 2014

10:00 AM, Speaker's Conference Room

The following members were present:

Delegate Chris Peace, Sub Workgroup Chair

Senator George Barker, Affordable Housing, Real Estate Law, and Mortgages Workgroup member

Ron Graham, *Department of Labor and Industry*; Erik Johnson, *VACo*; Katie Payne, *AGC, Williams Mullen*; John Catlett, *Code Administration, City of Alexandria*; Steve Calhoun, *Department of Housing and Community Development*; Trisha Henshaw, *Department of Professional and Occupational Regulation*; Renee Pulliam, *Virginia Apartment Management Association*; Chip Dicks, *Virginia Association of Realtors*; Elizabeth Palen, *Virginia Housing Commission*

Objective:

This meeting affords the opportunity to address Delegate Peter Farrell's legislation (HB 179, Farrell, 2014) with past legislation as a starting point for discussion.

We will not necessarily go forward with the content in this bill; this sub workgroup meeting is a solutions oriented meeting to make recommendations to the Affordable Housing, Real Estate Law, and Mortgages Workgroup and ultimately the full Commission concerning asbestos-related issues.

Sub Workgroup Recommendations:

After full discussion (see below), the following recommendations were agreed to:

- (1) Virginia Department of Labor and Industry will explore ways to make notice (to workers and others who may be on the job site) more conspicuous and more user friendly.
 - (2) A letter will be sent to DHCD asking that the Virginia Building Code Academy include a training module for building code officials that includes awareness and review of asbestos as part of training for building inspections.
 - (3) Trisha Henshaw agreed to ask the Virginia Board for Asbestos, Lead, and Home Inspectors (Asbestos Board) to promulgate regulations regarding changes in name only of the companies of rogue contractors who have been sanctioned regarding asbestos issues and returned to business.
- Overall the consensus was that most issues lie within the purview of the general contractor.

Discussion:

Delegate Chris Peace: I know this from work done on my own home that asbestos workers have been through lots of training.

A question was asked of Trisha Henshaw of DPOR: How many complaints have been made and what is the nature of the complaints concerning asbestos?

Answer: During the time period July 2009 to June 2013, there were 16 complaints: of those, 10 are closed 10 closed- because there was no jurisdiction; three are open and the nature of the complaints is not available to the public; and three resulted in disciplinary action by the Asbestos Board, one involving an asbestos contractor.

Chris Peace: What is the law now?

Answer:

- (1) Workers, supervisors all need training.
- (2) Asbestos Board licenses asbestos supervisors.
- (3) DPOR covers asbestos contracts.
- (4) Asbestos Board deals with only licensed employee's overview of job safety relating to OSHA; meaning state OSHA.
- (5) There are training requirements from the EPA.
- (6) Work place safety is appropriate.

Chris Peace: What is the issue? Administrative?

Answer:

There is a poster that informs the worker of rights under OSHA—state OSHA program.

John Catlett: There have been substantial inconsistencies in Alexandria where EMS workers and building inspectors have gone on site and not known there was disturbed asbestos. Also, asbestos notification needs to be in English and in Spanish.

Chip Dicks: Lowest common denominator is a factor: contractors hire untrained day laborers to perform this work. Also, the job site itself and those coming on to the site may not be trained in avoiding asbestos. There may be some value to have more signage.

DPOR staffs any asbestos class drafted from what EPA requires—and conducts unannounced training.

If employer is complying with the law they have a working relationship with DPOR and if not, it would be a question of a fraudulent license.

John Catlett: In my district, EMS rescue workers and people who were residents occupied two large apartment buildings while they were being renovated—Federal OSHA got involved.

We should be addressing those who are not asbestos workers—also Spanish is appropriate—most workers on the construction sites speak Spanish—and the cleaning crews speak Spanish.

Senator George Barker: Two things stood out from Senator Ebbin's bill (same as HB 179, Farrell)

- (1) Some on job site didn't know there was asbestos present.
 - (2) They didn't remember what to do if there was a problem—and had no avenue to complain—and workers were fearful if they did so, they would lose their jobs.
- No written materials seem to be available.

Chris Peace: There should probably be a standard manual on each job site.

John Catlett: Contractors don't have to show reports to local building inspectors; consequently, the building inspectors don't know there is asbestos on the job site. *Major concern other

workers on job site are not aware—need general posting on the job site that asbestos has been interrupted.

Ron Graham: OSHA says that on a multi-employer site there should be signs posted.

Is the general contractor required to notify other trades?

Answer: Generally the asbestos contractor is there by himself—complaints are not from asbestos workers but those who are not trained asbestos workers.

Chris Peace: The bill as introduced does not appear to do what it attempts to do. From this discussion it appears the problem is from day laborers or others on the job site.

John Catlett: Yes, asbestos is sometimes found where it is unexpected—inspectors go in without proper protection.

Chris Peace: Is it wise for building inspectors to take asbestos training? How many hours are needed?

Discussion ensued.

Need to increase training but maybe not to 36 hours of training? Concerned about liability.

Building inspectors need 16 hours of training every two years—a core module at the Building Code Training Academy is a perfect place to teach asbestos awareness—should be one or two hours of training.

This solution may be better than passing a bill.

Steve Calhoun: DHCD can amend the Building Code regulation dealing with training on this issue; it is done all the time.

Maybe a one-hour awareness class on what to watch for on a site regarding asbestos.

Every three years the Building Code is updated—if a training module is to be developed it could be then.

*VHC will send a letter to DHCD regarding code academy modules and the awareness and review of asbestos safety precautions.

Discussion of size of font of poster to be displayed on a job site.

Chris Peace: are the poster and materials published in Spanish?

George Barker: Looking at (HB 179) the new language under clause (iii) of § 54.1-515.1—not just posting but handed something—should there be something handed to them instead of just posting?

Barbara Favola letter: Many workers have English as a second language and they don't know how and to whom to report violations.

Is there any signage up to say asbestos has been interrupted?

Renee Pulliam: If we already have OSHA—why add more administrative burden? The issue I have is if you are audited and Joe worker's paper is not there and that doesn't cause an unsafe situation, then is the requirement an unnecessary burden—very redundant. Many languages are spoken throughout the state; I also object to English and Spanish being on the signage.

*VDLAI can explore ways to make notice more conspicuous and more user friendly.

Asbestos contractors who change the name of business when previously guilty of a violation.

Chris Peace: Penalties don't get contractors who change their names.

Trisha Henshaw: The Board had looked at what regulations will be necessary and DPOR has ability to check. For the violation of all requirements Dolly, OSHA and the Board has the ability to take action, but the workers and the supervisor are licensed, not the contractor.

Trisha Henshaw: My Board looks to § 54.1-500—it has no jurisdiction over unlicensed people.

George Barker: Does the new language add anything to what the Board can now do?

Regarding penalties, Asbestos Board can take action if a contractor hires an unlicensed person—to go after a contractor would be a Board for Contractors violation.

Trisha Henshaw: Issue has to have it come after Board for Contractors—currently we don't have people connected to other people under our purview to license

The consensus of the group was that asbestos should be treated as lead abatement is now.

Chris Peace asked whether the Asbestos Board can be asked to promulgate regulations based on these factors, like those on line 37 of HB 179 or will the Board promulgate these regulations without a bill?

*Trisha Henshaw will take this suggestion to her Board and report back to the workgroup.